THE NEW-YORK
CITY-HALL RECORDER.

VOL. II. *For February*, 1817. NO. 2.

AT a COURT of GENERAL SESSIONS of the Peace, holden in and for the City and County of New-York, at the City-Hall of the said City, on *Monday* the 3d day of *February*, in the year of our Lord one thousand eight hundred and seventeen—

PRESENT,

The Honourable
JACOB RADCLIFF, *Mayor*,
PETER CONREY, and } *Aldermen.*
ARTHUR BURTIS, }

GRAND JURORS.

JOHN P. ANTHONY, *Foreman.*

JAMES AINSLEY, JAMES BAILEY,
JOSEPH BLACKWELL, PETER CRARY, Jr.
ANDREW GASSNER, N. GREENARD,
JONAS HUMBERT, JOHN JUHEL,
FREDERICK JENKINS, HENRY JACOBS,
JOSEPH LLOYD, JOHN I. MORGAN,
JOHN MORSS, NATH'L. PAULDING,
P. SCHERMERHORN, Jr. THOMAS C. PEARSALL,
JAMES RENWICK, JOHN LANG.

(RIOT—ASSAULT AND BATTERY.)

JOHN SCOTT, JEWETT PRIME, SAMUEL WYNANT, OLIVER BANCROFT, AND JACOB SMITH MILES, PATRICK HILDRETH'S CASES.

MAXWELL & PRICE, *Counsel for the prosecution, against the five first-named defendants.*

KING & ANTHON, *Counsel for those defendants.*

MAXWELL, *Counsel for the prosecution against Hildreth.*

PRICE, *Counsel for the defendant.*

Where a great number of persons assemble in a meeting-house, during hours in which divine worship is generally performed in other places, and riot and disorder takes place in such house, it was held, that no person or persons then present, could be found guilty of such riot, without proof that he or they took an active part in such riot, either by doing some riotous act, or by aiding, abetting, or assisting others to perform such act.

To make a man a rioter, it must be shown that he had some concern in a riot; and it does not follow, because a man is present where a riot is committed by, or among a multitude, that he is guilty of a riot.

B., the owner of a meeting-house, held meetings therein, and noises and disturbances frequently occurred, to the annoyance of his hearers. To detect certain lads *who fired squibs or crackers in the church*, the son of B., aged thirteen, was standing up during *divine service* before H., one of the hearers, whispering to another boy to go and tell the sexton something concerning the *squib boys*. H. tapped the son of B. gently on his head, with a cane, and told him not to make a noise. In a prosecution against H. for an assault and battery on the boy, it was held that H. was not guilty.

The five first-named defendants were indicted for a riot, committed on the evening of the 4th day of February, instant, in the church of Amos Broad, in Rose-street; and Hildreth was indicted for an assault and battery committed on Amos Broad, jun., at the same place, on the evening of the 5th of January last.

On the traverse of the indictment for a riot, it appeared, from the testimony of Amos Broad, that about seven years ago he purchased the church No. 51 Rose-street, and had officiated therein as a minister of the baptist denomination ever since that time, except for about a year.

There had been much noise and disturbance made in the church during divine worship at divers times, and for several Sabbaths previous to that laid in the indictment he had not held meeting in that place. On the afternoon of the day the riot took place, he had given notice that there would be no meeting held in the evening, and was attending a meeting in John-street at the usual season for evening service, when he received information that the church in Rose-street was broken open. Hurrying to the place, he found that there were an hundred persons or more in the church, and from one to three hundred on the outside. The church was lighted, and great tumult and confusion prevailed. Those on the outside were calling on the multitude within, and inciting them to acts of violence. The watchman who came with Broad was assaulted and obliged to retire. The outer doors, however, were secured until more assistance could be procured to apprehend the rioters within. In the mean time, the principal part of the assembly retreated from the back door, so that when a rein-

forcement of the watchmen arrived, very few, if any, remained in the church, except the defendants. It was found, by Broad, on his return, that considerable damage had been done by the rioters. Several partitions had been broken down, the organ broken, and the *Hymn Books scattered around in different places.*

It appeared, by the subsequent testimony, that before the arrival of Broad, some unknown hand had rudely touched the deep-toned organ, which sent forth notes, harsh, grating, and discordant; while a black boy, ascending and seating himself in the pulpit, completed a scene of mockery and derision to the vile and worthless—of amazement and horror to those who reverence things divine.

The defendants, being found in the church after the others had retired, asserting their innocence, went, voluntarily, with Broad and the watchmen, to the watch-house.

Broad, in his testimony, declared that the defendants were present among those assembled in the church, and appeared to be as much concerned as the others; but he could not designate any particular act done by any particular person in the assembly.

It was proved, on behalf of the defendants, that the sexton of the church, after the service in the afternoon, had become intoxicated, and left the doors unlocked. Some evil-minded persons, whose names were unknown, finding that access could be obtained, entered the church and lighted it, and a number of other persons, among whom were the defendants, afterwards came, either under an idea that divine service would be performed, or that a singing meeting, as had been usual, was to be held there that evening. During the time of the continuance of the defendants in the church, their behaviour was orderly, and they remained quietly seated the principal part of the time they remained there; and were so seated when the watchmen came and apprehended them, as before stated.

It was further proved, that they were young men of sober, industrious habits.

Before the testimony had closed, the court expressed an opinion that the prosecution could not be sustained, unless it could be shown, that the defendants took an active part in the riot, or were aiding, abetting, or assisting those engaged in such riot.

The counsel for the defendants, therefore, declined addressing the jury; but the opposite counsel contended, that the defendants ought to be found guilty, because they were in the church, previous to the time the outrage complained of occurred, and took no steps in discouraging or suppressing the tumult. Their silence, on such an occasion, indicated their assent to the shameful conduct of others, with whom they were equally guilty.

In this country, every citizen had a right to worship the Supreme Being according to the dictates of his own conscience, and every denomination of Christians were, and ought to be, protected by law, from insult and aggression. The counsel, therefore averred, that in this case, the great interests of Religion were affected, and they zealously urged the jury, by their verdict to discountenance the malignant persecuting spirit which had been manifested towards an inoffensive citizen, and thereby prevent others from the commission of similar enormities.

His honour the Mayor charged the jury, that the court had observed, with some surprise, the zeal manifested by the counsel for the prosecution in their remarks.

The court did not consider this a case in which the rights of conscience, or the important principles of Religion, could, by any possibility, come in question or be affected. The simple question for the determination of the jury was, whether the defendants were guilty of a riot, either by taking an active part themselves, or in aiding, abetting, or assisting others, in the commission of such riot. According to the view which the court had taken of the circumstances in this case, the testimony would not warrant a verdict against the defendants. A great number of persons had assembled in the church at the time the riot was committed. No previous concert had been shown on behalf of the prosecution, between the defendants or any other persons, to assemble for any unlawful purpose; nor had it been proved that the defendants committed any act of riot or violence in the church, or had, in any manner, aided, abetted, or assisted others, in the commission of the outrage.

The mere circumstance of being present in the church during the evening in which

the riot occurred, without taking an active part in suppressing the riot, could not, in the opinion of the court, render the defendants guilty of a riot. Could the defendants, for that reason, be convicted, there is no man in the community, who happens, inadvertently, to be among a multitude where a riot occurs, but that may be prosecuted and punished as a rioter, however innocent his intentions and conduct may have been: if the doctrine contended for by the counsel for the prosecution be correct, then every person in that church, whether he came to attend divine worship, or for any other purpose, is liable to be prosecuted for, and convicted of a riot. In the opinion of the court, the idea is inconsistent with reason, and contrary to law. The court, therefore, charged the jury, that if they believed that the defendants did not take an active part in the scandalous proceedings of that evening, and were not aiding, abetting, or assisting others in those proceedings, to acquit them.

According to the testimony, in this church divers riots and disturbances had taken place previous to the time laid in the indictment. The court considered it of vast importance in the community, and the sacred cause of Religion required, that ministers of the Gospel should maintain that dignity of character calculated to command respect from the people: and where neither the character nor sacred functions of a divine were sufficient to command that respect, or, at least, to secure him from insult and aggression in his own church, it were much better for the interests of Religion that he should relinquish the employment.

On the traverse of the indictment for an assault and battery on Amos Broad, jun. by Patrick Hildreth, it appeared by the testimony of the boy, a lad about thirteen years of age, that on the evening of the fifth of January a meeting was held in the church; and while his father was preaching, the witness was standing up directly before the defendant, to watch certain boys *who fired crackers*, and give notice to the sexton. While the witness was talking to another boy, and desiring him to tell the sexton something concerning those boys who *fired crackers*, the defendant from behind tapped the witness on his head with his cane, and told him not to make that noise. The boy, in the simplicity of truth, declared that he was not tapped harder than was necessary to make him silent. It appeared by the testimony of the father, that during the same evening, while preaching, he discovered the defendant talking loud, and that he the witness called the defendant by name from the pulpit, and wondered "*how* a man of his standing could thus conduct himself."*

The next day the defendant with another came to his house, and the defendant used much provoking language to the witness, because he spoke to him publicly the evening before. After the defendant came to the house on Monday morning, and not before, the lad told his father about the tapping on the head. It clearly appeared by the current of testimony, that the words made use of to the father, rather than the injury to the boy, occasioned this prosecution.

Maxwell abandoned the indictment, and the defendant was immediately acquitted.

We are aware that while animadverting on the particular modes of worship, adopted by any religious sect or denomination of Christians, we tread forbidden ground. Not intending, however, to enlarge on a topic so peculiarly delicate, a layman may be permitted, in cases like these, to direct the attention of his readers to the truth by one or two simple inquiries.

Reader, what, think you, would be done to that boy who should, wantonly, let off a squib or cracker, during divine service, either at Trinity or St. Patrick's church? None have yet had—they will not have, the temerity.

Why, then, was such conduct, and even worse, practised with impunity at the church of Mr. Broad?

Why, think you, is it found necessary at Camp-meetings, in addition to a strict penal statute, if we are not mistaken, enacted expressly for the purpose, to set a strong watch and guard around the camp, to prevent riot and disorder; while churches, of the description first mentioned, require no such auxiliaries? There is no established church in this country—no union between church and state; and the day of religious intolerance and persecution has, long since, passed away.

Look at the concluding remark in the

* "Rebuke thy son in private—public reproof hardens the heart." PROV.

charge of the court, above reported, for an answer, in part, to these inquiries.—Divines, for an entire solution, "search the scriptures:" for therein ye are directed to "worship the Lord in the beauty of holiness."

Ministers of the sacred covenant—ye who officiate in the sanctuary, the momentous events of the last twenty-five years, have demonstrated the truth of the declaration by your Divine Master: "The church is founded on a rock—the gates of hell shall not prevail against it." Do not, we beseech you—the Genius of Religion herself, bending from the skies, implores you not to give occasion yourselves for the enemies of the cross to revile.

(ASSAULT AND BATTERY—DISTRESS.)

EDWARD C. QUIN and JACOB MONTROSS' CASES.

PRICE, *Counsel for Quin.*
GALE & WHITAKER, *Counsel for Montross.*

Though the Landlord hath a right, after distraining, to impound the goods on the premises, he hath no right, by colour of such distress, wholly to dispossess such tenant, and bar him from the enjoyment of the premises.

One in peaceable possession, hath a right to make use of so much force as may be necessary to enable him to retain such possession, or, to remove an invader.

These were cross indictments for an assault and battery, committed by the abovenamed defendants on each other. The controversy originated concerning the right of possession to a certain school-room, (81 Barclay-street,) and the facts, without descending to particulars, were briefly these:—

Some time previous to that laid in the indictment, Quin hired the premises to Montross, as a school-room, and there were $8 79 due to the former for rent. In the absence of Montross from the school-room, Quin, as his own bailiff, entered the room, made distress and barricaded the usual door for entrance, by placing and piling up benches against the door, which opened inwardly, in such manner that access from without was impracticable, without breaking the door.

Montross, on his return, finding the door barred as aforesaid, applied for legal advice to Whitaker, the Counsel above mentioned, who advised him to demand entrance of Quin, in a peaceable manner, and if entrance was denied to break the door.

Montross, with several others, went to the house and demanded entrance of the wife of Quin. Entrance not being peaceably obtained, Montross broke the door, entered, and built a fire in the school-room. While thus in peaceable possession, with several of his friends, whom he had invited to see the issue, Quin entered in a violent manner, and putting himself in an attitude for fighting, bestowed many abusive epithets on Montross, who, with an axe-handle uplifted, retreated backwards, and requested the other to quit the room, who, notwithstanding, pressed forward.

According to the weight of testimony, Quin commenced the first assault by collaring the other, who, disengaging himself, bestowed a number of hearty thwacks on the head of the other, with the unwieldy bludgeon which he had in his hand.

By the efforts of several watchmen and the others present, the combatants were at length separated, and peace restored.

With regard to the assault, Quin, in his testimony, swore, that when he was about entering the school-room, Montross stood at the door with an axe-handle, which the witness exhibited in court, and without any provocation, and before the witness had assaulted Montross, he struck the witness three severe blows over the head with that weapon!

"Our armies swore terribly, in Flanders, quoth my uncle Toby." STERNE.

Price read the 6th and 7th sections of the statute "concerning distresses, rents, &c." (1 vol. R. L. p. 435 and 36.) and contended that Quin had a right to make use of the whole premises in question *for impounding the distress.* Having done so, the possession became vested in him, and, therefore, the subsequent entry of Montross was tortious.

Gale and Whitaker, contra.

His honuor the Mayor said, that the statute read by the counsel related, principally, to a distress made on farms in the country, and did not authorize impounding a distress on the whole of the premises, as in this case, to the entire exclusion of the tenant. It ought, at least, to have been shown that there was no other convenient place, on or near the premises, to impound this distress; otherwise the right of tenancy in a city like this might be utterly subverted, under colour of a distress.

After the arguments of the counsel to the

Jury, which related, principally, to matters of fact, the Mayor charged the Jury, that the term having been leased by Quin to Montross, the latter had the right of possession; nor was such right of possession devested by the subsequent entry and distress which Quin made on the premises, as detailed in the testimony. Although Quin had a right of entry, to make the distress, he had no right to bar the door in such manner as to exclude entrance by the tenant.

In the view which the court had taken of the testimony, Quin was guilty of the first assault, and ought to be found guilty; and should the Jury believe that Montross made use of more force than was necessary, in removing Quin from the school-room, which he had wrongfully entered, it would be the duty of the Jury to find Montross also guilty.

Both were found guilty, and Quin fined $50, and Montross $1.

(MALICIOUS MISCHIEF.)

JOHN GILMORE'S CASE.

MAXWELL, *Counsel for the Prosecution.*
PRICE, *Counsel for the Defendant.*

A misdemeanor cannot be compounded by the parties, unless through the special interposition of the court, or by the approbation and consent of the district attorney.

Where an assault and battery, which, in the judgment of the district attorney, was of an infamous nature, had been thus compounded, and the costs paid to the clerk, it was held that the former officer was not precluded from bringing on the case to trial.

To cast spirits of vitriol, aqua fortis, or any other powerful acid substance, on the person or clothes of another, wantonly and maliciously, is, *at least, an infamous crime*—and *ought to be made* felony by statute.

In the researches of the anatomist, he deduces the same principles and arrives at the same conclusion, whether the subject, exhibited for dissection, during life, was a gentleman or a vagabond. So in the moral anatomy, if we may be allowed the comparison, principles and conclusions drawn from human conduct are equally useful to the community, whether the subjects from whom such principles and conclusions are derived are respectable or abandoned. In the following case, as in many others which we have laid before the public, it will be seen that the parties prosecuting or defending are entitled to little consideration; but the offence is, in its nature, atrocious, and claims particular attention. In England, the offence of throwing aqua fortis on the clothes of another, was made felony by statute: (6th Geo. I. c. 23. sec. 11,) which statute was enacted to prevent the practices of weavers and others, who, on the introduction of certain Indian fashions, prejudicial to manufactures in that country, proceeded either openly or in a secret manner to destroy the clothes of persons following such fashions, by cutting such clothes or casting aqua fortis thereon, in the streets. (4th Black. Com. 245.) If in that country it was found necessary to prevent such offences from being committed by men who were induced by motives of self interest, how much more necessary that the same practice should be restrained in wretches who have no motive to allege in extenuation? Secret and fraudulent mischief, of any species, in a city like this, should be punished severely. Otherwise there can be no security, either of person or property.

The defendant was indicted for an assault and battery committed on Letitia Smith, on the 27th day of January last.

Before the testimony on behalf of the prosecution was produced, Price moved the Court to arrest the proceedings, and discharge the defendant, on the ground that the party prosecuting and the defendant, had settled between themselves, and the costs had been paid to the clerk of this court. The Counsel read the following section of the statute as the ground of his application: "That in all cases where a person shall, on the complaint of another, be bound by recognisance to appear, or shall, for want of surety, be committed, or shall be indicted for an assault and battery, or other misdemeanor, to the injury and damage of the party complaining, and not charged to have been done riotously or with intent to commit a felony, *or not being an infamous crime*, and for which there shall also be a remedy by civil action, if the party complaining shall appear before the magistrate who may have taken the recognisance, or made the commitment, or before the court in which the indictment shall be, and acknowledge to have received satisfaction for such injury and damage, it shall be lawful for the magistrate in his discretion to discharge the recognisance, &c. or for the court also in their discretion, to order a *nolle pro-*

sequi to be entered on the indictment," &c. (1 Vol. N. R. L. p. 499. sect. xix.)

The counsel contended that the parties, having appeared before the clerk, who is the organ of the court, and paid the costs, had fulfilled the requisitions of the statute.

Maxwell contended that the application made to the clerk, and the settlement of the costs, without the concurrence of the district attorney, did not preclude him from bringing on a case which he conceived of an aggravated nature; and for the perpetration of which, in his judgment, public justice called for condign punishment. The statute did not authorize the clerk to perform duties inconsistent with the ordinary nature of his functions: duties which were declared by the statute as resting in the discretion of the court before whom the indictment shall be. What discretion could the clerk exercise?

The court decided that the application ought to have been made, in the first instance, to the district attorney. He was the officer who was presumed to be acquainted with the nature of all complaints on behalf of the people, before the court. Though the statute declared that the party prosecuting should appear "before the court in which the indictment shall be, and acknowledge satisfaction," &c. yet the practice of the courts has been to invest the district attorney with a power and discretion in such cases, which it is presumed will be properly exercised. Without his advice and concurrence or that of the court, no misdemeanor ought to, or could, be compounded. The court, therefore, ordered the trial to proceed.

It appeared in evidence, that on the evening of the day laid in the indictment, the defendant with two other persons, were together in Duane street, and while Letitia Smith and Susan Hotchkiss were standing near the door of a Mr. Bartlett, the defendant threw some strong acid substance on the clothes of the women, which burned and spoiled the said clothes, and burned the neck of the first-named woman considerably. The testimony of these women, who appeared to be women of the town, was confirmed by Peter Sherwood, who observed the defendant in the act of casting the liquid from his hand, and heard him say that "it was above half gone, but that he had enough left yet, to burn up every —— in Duane-street." It further appeared, that the defendant had threatened these women, that if they persisted in the prosecution, he would do them a greater injury.

From the testimony of John G. Bates, with whom the defendant had worked, it appeared that offers of a settlement had been made by Bates to these women, on behalf of the defendant, and that they had agreed to settle, on receiving pay for their clothes. Price summed up the case to the jury, but Maxwell submitted it under the charge of the court. The jury found the defendant guilty, and he was fined $50; the court, on that occasion, observing, that the offence of which he had been convicted was atrocious in its nature, and that his poverty alone had exempted him from a heavier fine.

PETER NELSON'S CASE.

RODMAN, *Counsel for the prosecution.*
PRICE, *Counsel for the defendant.*

An indictment, at common law, cannot be maintained for a mere trespass.

This was an indictment, traversed during the term of December last, at common law, for a trespass, in breaking and entering the cabin of the ship Remittance, in this city, during the night, with an intention of stealing the goods, chattels, and effects of Samuel I. Waring.

The following facts were proved by Waring: That in the night laid in the indictment, the witness staid in the cabin of the ship, in which he had his clothes and other effects, and at about one o'clock he heard some person on the deck forcing open the cabin door. Waring remained silent until the prisoner had entered the cabin, when, rising from the birth, Waring seized the prisoner, threw him on the cabin floor, and, presenting a loaded pistol at his breast, caused him to surrender. Waring then went on deck, and found that another person had been concealed on deck, in the forepart of the ship, who escaped on the wharf, and, calling on the watch for assistance, Waring discovered two other persons on the wharf, one of whom remarked to the other, that *all was over*. Both then fled.

Price, on the production of this proof, submitted to the court, whether an indictment for a trespass could be supported. The prosecution was a novel one, and in the absence of all precedent, for such an indictment, the counsel considered himself justi-

nable in moving the court for the acquittal of the defendant.

Rodman argued, that the offence disclosed in the testimony was an open violation of the common principles of justice. The defendant could not be punished for a burglary, because the place where the offence was committed was not a dwelling-house; nor could he be punished for stealing, because his object was frustrated by his detection. If such an outrage was not, it ought to be, indictable.

The court preferred that the question should be argued, on a motion in arrest of judgment; which was set down for argument on the last day of the term, and the jury, by the consent of the counsel for the defendant, and by the advice of the court, found him guilty of the charge laid in the indictment.

The motion in arrest of judgment, however, was not made, and the court suspended their sentence until the next term. The defendant was brought up among the prisoners discharged by proclamation; and Price, applying for his discharge, was not opposed by Maxwell, the public prosecutor, and the defendant was accordingly discharged.*

(ROBBERY—GRAND LARCENY—PETIT LARCENY.)

LAWRENCE PLATO, THOMAS DAVIS, HUGH BRIGHAM & JOHN WHITE'S CASES.

MAXWELL, *Counsel for the four several prosecutions.*
SIMONS & GARAGHAN, *Counsel for Plato.*
PHŒNIX, *Counsel for Davis and Brigham.*
KING, *Counsel for White.*

On the traverse of an indictment for a robbery, where the principal witness, on behalf of the prosecution, appears before the court in a suspicious light, equivocates, and is contradicted by other witnesses, it is the safer course for the Jury to acquit the prisoner.

Force or violence, in depriving a man of his property, is an essential ingredient to constitute robbery.

Honest, prudent people, need not fear Highway Robbery in the city of New-York.

It seems that in an indictment, a count for Highway Robbery includes, within itself, Grand or Petit Larceny, or Assault and Battery.

During the last term, the prisoners were all indicted for Highway Robbery. Plato on two indictments, for robbing David D. Smith of a watch of the value of $60, on the 13th day of December last; and for Grand Larceny in stealing bank notes to the amount of $16, and one gold coin, commonly called a Joe, of the value of $16, the property of John Clayton, on the 12th day of January instant: Davis and Brigham, on a single count, for robbing Samuel Green of a pocket book of the value of six cents, on the 24th day of December last; and White, also on a single count, for robbing Jasper Brockway of a $5 bill, on the 24th day of December last.

On the traverse of the indictment for robbery, against Plato, it appeared by the testimony of Smith, that between eleven and twelve o'clock in the night of the day laid in the indictment, as he was walking in Harman, near Market-street, he was suddenly attacked from behind, by a man who knocked him down, by striking him on the head. He remained senseless, as he supposed, about an hour and a half; and when he came to, found himself in the hands of a watchman. On recovering, he found that he had lost his watch and about $4 in money. He afterwards advertised the watch, and found it at the police.

On his cross-examination, he stated that he never saw the prisoner before the time he, the witness, was attacked; and at the time of the attack, he merely saw the glimpse of a man's hat, as he struck from behind. He had been drinking the same evening, and had been *in decent company*, though he was a stranger to the women with whom he admitted he had been in company. During the evening, he had not been in the cellar occupied by the prisoner, with two girls.

From the testimony of David Truesdell, it appeared that Truesdell arrested the prisoner, and found the watch in his possession. He alleged, that he bought it of a

* We were anxious that the important question arising on this case should have been discussed and decided by an opinion from the court. The strongest argument against the prosecution is, that no precedent for a trespass, merely, at common law, can be found in the books; and it may, therefore, be inferred that such a prosecution cannot be supported. The inconvenience, however, of this doctrine, is the strongest argument in favour of the prosecution; for if such an indictment cannot be supported at common law, some of the greatest outrages which can be perpetrated in society, would pass with impunity.

girl who had been in the Penitentiary; and he offered Truesdell $20 if he would release him, which the witness refused to do.

From the examination of the prisoner, it appeared that he kept a cookshop in Market-street, and purchased the watch for $7, of a girl by the name of Norris, who lived in a chamber above.

From the testimony of Alenah Hamilton, it appeared that she lived with Plato, and that Smith came in the cellar about one o'clock at night, with Marian and Jane Norris, women of ill fame, and was intoxicated. They staid some time, and went out together. Plato went out about five minutes after Smith, and the witness, afterwards, saw Plato in possession of the watch, and showed it to a number who came in the cellar.

Smith, on being again called and examined by the court, again denied being with the girls at the shop of Plato, but admitted that he had been with two in the chamber, above the cellar, kept by one Dougherty.

This witness, whether from the blow received on the head, or, from some other infirmity, through the whole of his evidence, trembled like a leaf; and to the cross-examination and further examination of the court, equivocated, and seemed anxious to avoid giving direct answers to several of the inquiries.

The court charged the Jury that, as the offence was one of the highest grade, the proof ought to be clear, to justify a conviction. The prosecutor appeared before the court in a suspicious light, and not entitled to much commiseration. On the whole, the testimony of Smith appeared to the court too uncertain to found a verdict against the prisoner; and he stood contradicted by Alenah Hamilton.

The Jury acquitted the prisoner from this charge.

Afterwards, the indictment against Plato for Grand Larceny, was traversed: and it appeared, that in the evening of the day laid in the indictment, Clayton went into the cellar of Plato, and while sitting there, the prisoner sat by his side, and conversed familiarly with him, for some time. A short time after he left the cellar, he found that the gold piece and money, contained in his pocket book, before he went into the cellar, had been taken from his pocket book, which was returned to its place in his coat pocket. On examining his great coat, which was wrapped round him while in the cellar, he found that a large opening had been made, by ripping open the facing, in such a manner that the hand could be introduced, between the cloth of the coat and the lining thereof, into his coat pocket.

Clayton made application to the police, and Hugh Spence went with him to the shop of Plato, to whom Clayton offered that he would give him one half of the money, if he would return the other half. The prisoner at length admitted that he had taken the money of Clayton, and at length agreed to accede to the offer of Clayton; Plato said that he had changed the gold piece at Fly-market, where he bought a ham.

He was immediately found guilty, and, on the last day of the term, sentenced to the state-prison seven years.

On the traverse of the indictment against Davis and Brigham, it appeared, that Samuel Green, apparently a country lad, and ignorant of the city, the day before Christmas, was proceeding down Chatham, a very public street in this city, in company with another countryman, when they were met by the prisoners with other profligates, when Davis accosted Green by coming up, and saying, "John, how d'ye do," as if he had been a particular acquaintance; at the same time seizing him round the waist. By fumbling round, he at length succeeded in picking the pocket of Green, of an empty pocket book. Green finding that he had been robbed, called to his companion; and, on making complaint, received a violent blow in his face from Davis, who, finding himself disappointed, threw the pocket book in the street.

His honour the Mayor, in his charge to the Jury, said that the evidence did not support the indictment for robbery. The property, instead of being taken by force or violence, was taken in an artful, secret manner. His honour, therefore, advised the Jury to acquit the prisoners of robbery, and find them guilty of petit larceny.

The counsel for the prisoners, submitted to the court, whether the Jury could find the prisoners guilty of the less offence, when the indictment contained only one count: but, the court said, that a count for robbery, in itself, was a count for larceny.

The prisoners were found guilty, and

sentenced to the City Penitentiary one year each.

On the traverse of the indictment against White, it appeared by the testimony of Brockway, that on the night of the 24th of December he had been at Corlaer's Hook in a carriage, with others, and after returning to Market-street, as he was walking, was knocked down with a loaded horsewhip, by the prisoner, and on recovering, Brockway found near him a watchman, hold of the prisoner, who demanded from him 2*s.* for his fare to Corlaer's Hook. Brockway further stated, that before he was knocked down, he had a $5 bill in his pocket book, which he missed on his recovery.

From the testimony of Isaac Shearman, a witness on behalf of the prisoner, it appeared that he was the owner of a carriage, and went on the night laid in the indictment to Corlaer's Hook, with Brockway and several other persons, who, on returning to Market street, left the carriage and ran away without paying their fare. The character of the prisoner for honesty and industry, was clearly proved. The court advised the jury to acquit him of the robbery, and find him guilty of an assault and battery, stating that this offence was included in the count for robbery.

He was acquitted by the jury of the robbery, and found guilty of an assault and battery.

(GRAND AND PETIT LARCENY—NEW TRIAL.)

NOAH M. HAUXHURST'S CASE.

MAXWELL, *Counsel for the prosecution.*
KING & SIMONS, *Counsel for the prisoner.*

Should the jurors, in a case of grand larceny, not be able to agree, and after staying out a reasonable time, and returning into court, are discharged, the prisoner may be tried again, for the same offence, by another jury.

A witness who gives a different statement in his testimony from that which he had before given, when under oath, in relation to the same transaction, will be distrusted in the whole of his testimony.

The prisoner was indicted, during the last term, for grand larceny, in stealing a quantity of shoes, and several uppers, or unfinished shoes, the property of William Venable, on the 26th day of December last; and for petit larceny, in stealing the foreparts of one pair of boots, the property of Richard Archer, on the 28th day of December last.

On the first trial, on the indictment for grand larceny, it appeared, by the testimony of Venable, that he kept a shop at No. 64 Fourth-street, and the prisoner, with several others, worked therein. He missed the shoes on the 26th day of December, and made inquiry in the shop, when the prisoner and the others belonging to the shop were present, when the prisoner *swore a solemn oath, by all the Evangelists*, that he *was not guilty*. Venable, from that time, suspected the prisoner, by reason of his guilty looks.

On the Sunday following, while the prisoner was absent from the house, and, as the witness believed, gone to the methodist meeting, of which he was either a member or a steady attendant, the witness went to the police office and made a complaint, and James Hopson, one of the police magistrates, came to the house where the prisoner kept his trunk, which was in a garret chamber of the house near or adjoining the shop. The prisoner being present, denied that he had the property stolen, in the trunk, but admitted that he had one pair of shoes therein, which he had taken to make the witness more careful of his property. Justice Hopson then asked the prisoner for the key of the trunk, but he said that he had left the key belonging to the trunk with his uncle. There was a key, however, which he had in his possession, which was tried to the lock, but not suiting it, Justice Hopson broke open the trunk, and found therein the shoes and uppers stolen, with a quantity of other uppers, and other materials, among which were the *foreparts of a pair of boots*, not belonging to Venable. The prisoner, on being questioned where he had obtained the uppers, answered, that he had them of a Mr. Ammerman, of New-Brunswick, for a debt which the latter owed him. It further appeared, that the prisoner calculated to carry his trunk away from the house of Venable, on a visit to his friends, on Long-Island, about the time of the discovery, as above related, occurred.

On his cross-examination, the witness stated, that, as he had understood, the prisoner, the day before the shoes were found, had represented to the mother of the witness that he had been, with others, in a carriage, to Corlaer's hook. The witness was sometimes absent from his shop in the night, principally on business. While the prisoner continued in the family, his deportment

was generally good, and he attended the methodist meeting regularly: but the witness believed that the prisoner was insincere in his professions, or, as the witness expressed himself, made use of religion as a cloak.

From the examination of the prisoner, taken in the police, it appeared that Venable, being careless and inattentive to his business, and frequently absenting himself from the shop and leaving it exposed, the prisoner took some of the property and put in his trunk, for the purpose of making Venable more careful, and that he, the prisoner, intended to return the same.

A great number of respectable witnesses were here introduced on behalf of the prisoner, who concurred in showing, that he was a man of good character and steady habits; and was in easy circumstances. That he was a steady attendant on the methodist meeting; and had been admitted as an inmate in respectable families, where he had frequent opportunities of stealing, but that he never had even been suspected of a crime before, to the knowledge of the witnesses. His friends lived on Long Island, and were respectable.

After the arguments of the counsel and the charge of the court, the jurors retired at about two in the afternoon, and at about four, returned into court, and requested that some testimony which had been examined, might be further questioned on some particular points.

The counsel for the prisoner declined to consent to this inquiry, and the court mentioned to the jurors, that the cause having been submitted to them, the court had no power to suffer any additional testimony to go to the jury without the consent of the parties.

The jurors then retired, and at about eight o'clock again returned into court, and stated that it was impossible for them to agree. A Mr. Mallory, one of the jurors, stated that he was subject to a quinsy, and that it would be very dangerous, if not impossible, for him to remain on the jury during the night. The court discharged the jury, and the prisoner was remanded for a new trial. Before the jurors had returned, the indictment against the prisoner for petit larceny, was traversed.

On this trial, it appeared by the testimony of Richard Archer, that on the 28th day of December, the prisoner came to the shop of the witness, at the corner of Hester-street and the Bowery, and he paid the prisoner a debt of $42; and, in that payment turned him out one dozen pair of men's shoes, and other articles in his line.

The place where the settlement took place, was in a small room adjacent to the shop, in the window of which the boot legs stolen were placed. While the witness was absent at his dinner from this room, where he left the prisoner, the foreparts of the boots were stolen, and the back parts left. On his return he missed the boot legs, but did not accuse the prisoner. He understood from a boy, that while he, the witness, was absent, the prisoner went into the shop.

The foreparts stolen, the witness afterwards found in the trunk of the prisoner at the house of Venable, who had given him information, that they were in the prisoner's trunk.

These parts were produced on the trial, and also the back parts, which the witness had brought with him to court. With regard to the identity, the witness stated, that he cut out the fore from the same piece of leather that he had cut the back parts, and he was fully positive, that the foreparts were the same stolen from him.

The testimony of James Hopson, on the traverse of this indictment, corresponded substantially with that given by Venable, as above stated, in relation to breaking open the trunk and finding the property. Hopson, however, stated, that when the property was found in the trunk, the prisoner appeared stupified.

From the testimony of Susan Venable, the mother of the prosecutor in the other case, it appeared that on Sunday morning, at about nine o'clock in the morning, she saw the prisoner in the chamber looking at a piece of cloth which he had taken out of his trunk.

From the testimony of Azel Conklin and John M'Manus, police officers, and Peter Ammerman, it appeared that they were acquainted with the shoe-making business, and they did not believe the fore and back parts of the boots, produced aforesaid, were cut from the same hide. This last-named witness also testified, that the prisoner never purchased uppers of the witness to his knowledge.

From the testimony of a brother of the prisoner, living at Huntington, in Suffolk

county, it appeared that last November. a year ago, he gave an order to the prisoner to get a pair of boot legs of one Royal Aldridge, of Jericho, on Long Island, and that the boot legs were obtained by him, which the witness thought were the same as those produced on the trial.

In the examination in the Police, the prisoner accounts for the possession of the boot legs, in the manner stated by the last witness.

The same character, as stated by the witnesses for the prisoner in the other case, was admitted by the counsel for the prosecution; and after the arguments of the counsel, his honour the Mayor, charged the jury in favour of the prisoner, and he was acquitted.

Afterwards the prisoner was again put to the bar for a new trial, when his counsel moved the court for his discharge, insisting that he could not be tried a second time for the same offence.

The counsel on this motion contended, that the ancient practice in criminal cases in England was, that the jury were bound to agree on their verdict: and so strenuous were the justices in this particular, that where jurors did not agree, they were ordered to be carted about from one assize to another until they agreed. In cases where the punishment affected life or member, according to the ancient doctrine, no man could be twice put in jeopardy, and that doctrine was applicable to the case before the court. This case, the counsel considered important, inasmuch as it would be settling the boundary between the prerogative of the court and jury: for if jurors had a right to return without a verdict, and the court suffered them so to do, the dignity and independence of the court would be destroyed, and the right of trial by jury at an end.

It was not denied by the counsel, but that in cases of a misdemeanor, our Supreme Court had decided that the court could grant a new trial; but in cases where the party, on conviction, would be subject to an infamous punishment, the ancient principle, to which the counsel had before adverted, applied with full force.

The counsel further contended, that the decision of this question rested in the sound discretion of the court; and, as the counsel had understood, by information, but, were not willing to vouch for its correctness, this same question had been determined in this court, in favour of the prisoner, by the honourable De Witt Clinton.

The counsel, in support of their argument, cited 2 Johns. Rep. 306. 4 Ibid. 294. 6 Dun. and East, 496. and Foster's Crown Law, 22.*

Maxwell, contra, was stopped by the court.

By the court, delivered by his honour the mayor:

The jurors on the former trial in this case, retired at about two in the afternoon, and after staying out a considerable time, returned into court for some explanation; they then stated to the court the impossibility of their agreeing on a verdict. They were sent out again, and in about six hours from the time they were charged, returned again, and informed the court, that they should never be able to agree. Mr. Mallory, one of the jurors, also stated that he was subject to a quinsy, and that he could not remain on the jury during the night, without manifest danger. The court thereupon discharged the jury.

The prisoner is now brought to trial, and the question arises, whether in a case of Grand Larceny, under the circumstances of this case, a prisoner can be tried a second time.

It has been suggested by the counsel for the prisoner, that this question has been decided in this court. The court called on the counsel, either to produce such case, or to inform the court satisfactorily, on what occasion such decision took place. The counsel have had ample time since the first trial, yet no such decision has been produced or referred to, on which the court could ground their judgment.

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* We shall produce the authorities on this point, on both sides of the question. It will be found, by referring to the books, that the counsel for the prisoner have correctly stated the ancient doctrine on this subject: but, that the rule for which they contend, has been subverted by recent authorities.

A juror sworn and charged, in a capital case, cannot be discharged. 1 Inst. 227. 3 Ibid. 110. Lord Hale's Summary of the Pleas of the Crown, 267.

The contrary doctrine may be found 2 Hale's Pleas of the Crown, 296. Burn's Justice, tit. Juror, Jacob's Law Dict. tit. Jury, Rex v. Gould, 1 Leach's Crown Law, 620. 2 Ibid. 546. Hawkins' Pleas of the Crown, B. 2. C. 47. Foster's Crown Law, from p. 21 to 27. Kel. 26. 47. 52. 3 Campbell's Nisi Prius, 207. 4 Taunton's Rep. 311. and see 2 Johns. Cases, P. 306.

This court is therefore left, in the absence of such authority, or of any decision in the supreme court, to decide the question for the first time in this court.

The rule for which the counsel for the prisoner contend, is ancient and applied to capital cases, or those wherein the punishment affected *life or member*. The reason of the rule, was undoubtedly founded on the *punishment:* and when life or member was once put in jeopardy, they could not be a second time. But since the establishment of this rule, the punishment for Grand Larceny has been changed. Many offences, formerly capital, the punishment of which was death, are now punished with transportation by a variety of statutes. In many cases, also, the punishment by cropping and branding, has been altered. Hence we find that in England, the ancient rule contended for in this case, has been in a measure exploded.

In this state, the supreme court has decided, that in a case of misdemeanor, the punishment of which is the same as in this case, a new trial may be had.

Had there been an express decision in the supreme court, or in this, we should have considered ourselves bound; and even in this case, should the jury find the prisoner guilty, we should consider it our duty, if requested, to suspend his sentence until a decision of the supreme court could be obtained.

Let the trial proceed.

The jurors who had been sworn on the former trial, were set aside and a new jury sworn.

The testimony of William Venable, on the direct examination, was the same as on the former trial, but on the cross-examination by King, this question was put to the witness:

On the Sunday in which you went to the police, and while the prisoner was absent at the methodist meeting, did you or not go to his trunk and open it?

The witness hereupon paused and hesitated, as though he wished to evade the question, which being distinctly repeated, the witness answered that he did.

Being asked whether he opened it with a key, he answered that he did not, for the trunk was not locked. Before he went to the police, he saw a number of pair of uppers in the trunk.

From the testimony of Eliza Venable, a sister of the last-named witness, it appeared that when the prisoner first came, the witness lent him a key which suited the lock to his trunk, which key the prisoner, since that time, had retained in his possession. While her brother had gone to the police, the prisoner returned with another man, but went out in a short time. The deportment of the prisoner in the family was good.

From the testimony of Isaac Renton, a witness on behalf of the prosecution, it appeared that he worked in the shop of Venable, and that the day before the prisoner was apprehended, Venable came into the shop and complained of the loss of *the shoes*, and that he the witness, then administered an oath to the prisoner, *by the crook of his elbow, as they swear Virginia negroes*, and he took an oath that he was not guilty of stealing the shoes; and after the oath was thus administered, the prisoner still continued to hold up his right arm, which induced the witness to say to him, "Hauxhurst, I believe you are guilty—your arm has become crooked."

The prisoner was the *only person in the shop sworn by the witness* on that occasion; and he never heard Venable complain of the loss of the uppers, until the day in which the prisoner was apprehended.

Enoch Stephens and Peter K. Beekman, who worked in the shop, proved the nature of this oath: and swore that the oath was administered, by Renton, *to all the workmen in the shop.* It appeared further, from the testimony of the persons working in the shop, that several of the workmen, among whom was Venable, did go in a carriage to Corlaer's Hook, and that the prisoner informed the mother of Venable. The prisoner was not in the habit of associating with the other workmen when they went out on a frolic.

From the testimony of Peter Ammerman, and Thomas his son, it appeared that the debt due by the former witness to the prisoner was not paid in uppers, nor did he authorize any person so to pay the said debt.

The same testimony on behalf of the prisoner in relation to his good character, was produced as on the former trial. The witnesses on this point were a Mr. Mott, Eleazer Hart, Henry Townsend and David Wooley.

One witness on behalf of the prisoner, a Mr. Avery, stated that Venable informed

him, that on Sunday he had opened the trunk of the prisoner with the key of the trunk, before going to the police.

The testimony on both sides here closed, and the counsel agreed to submit the cause to the jury, under the charge of the court.

His honour the Mayor charged the jury, that this case was involved in doubt and mystery. It appeared that there was some difficulty in this family, between Venable and the prisoner, previous to the time the alleged discovery of the property in the trunk of the prisoner.

The testimony of Venable was by no means satisfactory. It was a question for the jury, whether there had not been a confederacy between the persons in this shop, against the prisoner. With regard to Venable, should the jury believe that he has wilfully mistated the facts in a single particular, this would form a good ground for distrusting the whole of his testimony.

The character of the prisoner was proved good, and, therefore, should the jury believe the case doubtful, it would be their duty to acquit him.

He was immediately acquitted.

(GRAND LARCENY.)

JACOB SHOURT and THOMAS DAVIS, indicted with JOSEPH—NOAH FOWLER'S CASE.

MAXWELL, *for the several prosecutions.*
PRICE, *Counsel for Fowler.*

A grand larceny cannot be divided into several distinct larcenies: and where a prisoner stole several articles, at the same time, the property of different persons, and several indictments were found by the grand jury, the court directed the public prosecutor to select one of the indictments for trial, and to enter a *nolle prosequi* on the others.

Citizens—Be careful to close and secure your entries.

During the last term, the prisoners were all indicted for grand larceny: the three first, on two indictments, for stealing two surtout coats, of the value of $25, the several property of Latham Mitchell and Orville L. Holly; and Fowler on three indictments, for stealing three surtout coats, the several property of Alexander M'Lellan, Charles Dickenson, and Richard Dickenson.

On the traverse of the indictments against Shourt and Davis, it appeared in evidence, that on the 22d day of December last, towards evening, the prisoners, in company with one Bingham, who had been prowling about the streets for plunder, went into the entry of a house (330 Pearl-street) and stole the two coats *at the same time*, and carried them to the house of David Brooks. Hays by some means traced the property to the possession of the prisoners, and it was restored to the owners.

On the traverse of the indictment against Fowler, it appeared in evidence, that the prisoner, one evening, cautiously entered the entry of the house of Charles Dickenson, in Cherry-street, and, after taking a view, retreated. He soon after returned, and went softly up to the place where the three coats, laid in the indictment, were hanging, and laid them, one by one, deliberately on his arm, and was about proceeding out, when Norvall M'Castor, a servant of Dickenson, who had observed every motion of the prisoner from the commencement, by looking from the back door, sprung to seize the prisoner, and gave the alarm to the family. The prisoner rushed to the door, and in his precipitation dropped his booty and his hat. He retreated into the street, pursued by Charles Dickenson and M'Castor, the former of whom cried, Stop thief! and overtook and seized the prisoner before he had proceeded far.

After the testimony had closed on the traverse of each of the indictments against all the prisoners, the court directed the public prosecutor to select one indictment in each case, on which he intended the evidence should apply, observing, that the two coats in the first mentioned case having been taken at the same time, though from different persons, the offence was, therefore, entire, and could not be divided into several larcenies. The same directions were given in the several prosecutions against Fowler; and the public prosecutor entered a *nolle prosequi* on two of the indictments against him.

Shourt, Davis, and Fowler, were found guilty, and all sentenced to the state-prison: Shourt for fourteen years, Davis for seven, and Fowler ten. Shourt and Fowler had, but a short time before, been liberated from the state-prison; and by referring to vol. 1. p. 166. the reader may see a further account of Davis. Parents, we say, read—the example is impressive—and legislators may

see, in these cases, a further proof of the remarks ventured in vol. 1. p. 174 and 175.

(GRAND LARCENY.)

THOMAS BROWN AND WILLIAM RAY'S CASES.

MAXWELL, *Counsel for the prosecution.*
WILSON & PRICE, *Counsel for the prisoners.*

Where two are indicted jointly, and, on the trial, some evidence is introduced on behalf of the prosecution, showing that the prisoners were aiding, abetting, and assisting in the commission of a felony, the court will not interfere in advising the jury to acquit one of the prisoners, that he may be sworn as a witness in favour of the other.

The jury will place no reliance on the testimony of a thief, unless strongly corroborated.

The prisoners, during the last term, were separately indicted for stealing a gold repeating watch, of the value of $60, the property of Joseph Bonfanti; and, jointly, for stealing a watch of the value of $100, the property of Gilbert H. Frost.

On the traverse of the indictment against Ray, it appeared that in the absence of Bonfanti, on the 13th of November last, his store, at No. 22 Bowery, was broken open, and the watch laid in the indictment, with other articles and money in specie, all to the amount of $600, were stolen therefrom. Bonfanti, in his testimony, stated, that he had previously seen Ray in his shop. From his examination taken in the Police, it appeared that the prisoner admitted that he had been possessed of the watch, and bought it of a man he did not know.

Brown was sworn as a witness for the prisoner, and stated, that three persons broke open the store, and that Ray was not there at the time. The first Brown saw of the watch, about three weeks before the trials, one John Smith had it, and sold it to the prisoner for $75. The prisoner had not money sufficient to pay for the watch, and pawned his own for $30, which, with other money, he paid for the watch laid in the indictment. Brown further stated, that he was then a prisoner, and had been in confinement about three weeks for stealing. He came originally from Providence, in Rhode Island state, and had been sentenced to the State-Prison in this state, from whence he had been pardoned, in June last, on condition of leaving the state. After his pardon he went to Philadelphia, where he was taken up in company with Jesse Hopkins, (see 1 vol. p. 173,) but was liberated by the Police in that city, and advised to return home; and, on his return through this city, he was again apprehended.

The court charged the jury, that the prisoner having admitted the possession of the watch laid in the indictment, was bound to account satisfactorily for such possession; and that the testimony of Brown, standing as it did, uncorroborated, was entitled to little weight.

Ray was found guilty.

On the traverse of the indictment against Brown, the same facts in relation to the breaking open the store, appeared in evidence; and Bonfanti swore, that after Brown was in Bridewell, the witness had a conversation with him, and he admitted that Smith and himself, before the time the felony was committed, went up the Bowery, and when opposite to the store, Smith went in and tried a key to the lock of the store-door and returned, and told the prisoner that it would suit.

Afterwards, and on the day laid in the indictment, Smith, one Wright, and the prisoner, went to the same store, which the two others entered, and brought out the watch.

Brown was found guilty.

On the traverse of the indictment against both the prisoners, it appeared that on the night of the 7th of December last, Frost was at the house of William Van De Water, at Corlaer's Hook, in company with a number of others, who, with the prisoners, were engaged in dancing. Frost had some difficulty with Eliza Kelly, who spit in his face, and he, in return, pushing her, the prisoners with others, under pretence of taking her part, made an outrageous assault on Frost, threw him on the floor, and in the scuffle, some, or one of them, took away his watch. John Angus, who happened to pass along the street at the time, heard the disturbance, and entered the house. He recognised both the prisoners among the assailants, and saw Ray with his arm round the waist of Frost, but no other evidence, concerning the agency of Ray in the felony, was produced.

Ray, in his examination, denies ever having had the watch; and Brown, in whose possession the watch was found, in his examination, stated that he got it of Ray to wear, and did not purchase it.

The counsel for the prisoners, applied to the court to direct the Jury to acquit Ray, that he might be sworn as a witness for the other.

The court refused the application, on the ground that some evidence of a connexion, between the prisoners having been produced, the existence of such connexion was a matter of fact, with the others, to be left with the Jury for decision.

The counsel for the prisoners, admitted that Brown was guilty, but denied that there was sufficient evidence in the case to convict the other. No person saw him take the watch: in his examination in the police, he disclaims all knowledge of the watch: and the examination of Brown could not criminate the other.

Maxwell, contra.

The court charged the Jury, that the only question in the case for their determination was, whether Ray was connected with Brown and the others, at the house of Van De Water, in depriving Frost of the watch. Should the Jury believe that he was connected in this transaction, or, that there was a general understanding between the prisoners, to steal generally, in either case, the Jury would be justified in finding both guilty.

Brown was found guilty, and sentenced to the state-prison fourteen years, to which place, before pardoned, he had been sentenced for the same time. He is a young man about twenty-five years old, of good external appearance, but a hardened wretch, who heard an impressive sentence from the court with a ridiculous smile on his countenance.

Ray was acquitted by the Jury, on the last-mentioned indictment, and his sentence on the other conviction was suspended.

The court directed Maxwell to lay the case of Van De Water, who kept the house in which Frost lost his watch, before the Grand Jury.

SUMMARY.

(FORGERY.)

Daniel Wild al. *William Brown*, was indicted, tried and found guilty of forgery, on two indictments. The first, for forging and passing as true, a promissory note, bearing date on the 11th of January last, for $94 36, payable in sixty days, to Messrs. Hunt, Randolph & Co. and purporting to have been executed by Charles Denison, and indorsed by Hunt, Randolph & Co.

It was proved by Denison and Joseph F. Randolph, one of the firm mentioned in the note, that the name of the drawer and the indorsement, were both forgeries.

The prisoner carried the note to the store of M'Gregor & Darling, and made a contract for a quantity of butter, amounting to $4 84 more than the amount of the note, with Henry T. Curtis, a clerk in the store. He delivered the note in payment, indorsing it with the name of "William Brown;" and also executed a note for the balance, signed with the same name. The butter was delivered and taken away, and a part thereof was afterwards recovered.

The other indictment was for forging and passing another promissory note, bearing date on the 4th day of January last, for $178 95, payable to Hopkins & Hawley, in sixty days from date, with usual grace, purporting to have been signed by Curry, Hunt & Co. and indorsed by Hopkins & Hawley and William Brown.

The prisoner passed this as a genuine note to John Wood. The proof was positive, that the note and indorsement were both forgeries.

The prisoner was sentenced to the State Prison ten years.

(GRAND LARCENY.)

Isaac Unwin was indicted, tried and found guilty of this offence, in stealing $109 in bank bills, and $187 in specie, the property of William Dougal. The money was taken from on board the brig Union, lying at the Exchange Slip, of which vessel Dougal was captain, and the prisoner a hand on board. A short time after it was missed, the captain found it at the boarding house of the prisoner, where he had carried the same.

The jurors recommended him to mercy, and his sentence was suspended.

William Jackson al. *Charles Harrison*, and *John Henry* al. *James Bowne*, *indicted with Samuel Van Zandt*, were indicted, tried and found guilty of stealing seven small trunks, locked within each other, and fifty handker-

chiefs, all of the value of $146, the property of Frederick Guion. The property, of which the above was only a part, was stolen by the prisoners, with Van Zandt, who turned state's evidence, from on board the brig Amelia, bound to the West Indies, where the owner had consigned the goods.

The felons carried the property to the house of Owen Kelly, in Bancker street, and sold the handkerchiefs at an inadequate price. *Kelly*, during the term, was indicted and tried, but acquitted, for receiving the property, knowing it to have been stolen; but under such strong circumstances of guilt, that the court suppressed his license for retailing spirits.

The prisoners were sentenced to the State Prison for five years each.

David Burton had been employed as a workman in an extensive flour warehouse, belonging to Isaac Wright and William Wright. He took, at different times, flour to the amount of $700, and sold it at different places. He disposed of a quantity at Christian Nestles & Son's, in Catherine street, where a part was found by the owners. It rather appeared that the prisoner had been guilty of a shameful breach of trust—the highest grade of stealing.

Bradford Mingo was indicted, tried and found guilty of stealing a blue coat, of the value of $20, from the store door of Paul Durando, on the 27th of January last.

Betsey Lewis was indicted, tried and found guilty of stealing divers articles of clothing, of the value of $25, the property of Minot Ripley, on the first day of February instant.

Hannah Smith, *Margaret Clifford*, and *James Yeomans*, were indicted, tried and found guilty of picking the pocket of Aaron Palmer, and stealing between $60 and $70, on the 3d of February instant. It appeared that the two first-named were girls of the town, and Yeomans a companion. They were all together at a house in Bancker street, when the pocket of Palmer was picked by one of the females, and the three afterwards divided the spoil.

Jordan Williams was indicted, tried and found guilty of stealing a gold watch, of the value of $45, the property of John Ewen. The prisoner came to the house of Ewen, with his boy, to sweep a chimney, and after the chimney was swept, the watch, which was hanging near the fireplace, was stolen. It was soon after found in possession of the prisoner.

Henry De Mare was convicted, on his own confession, of stealing.

The prisoners Mingo, Lewis, Smith, Clifford, Williams and De Mare, were sentenced to the state prison for three years each, and the sentence of the others suspended.

(PETIT LARCENY.)

Henry Robins, *York Graham*, *John Welsh*, *Samuel Jackson*, *William James*, *Samuel Hicks*, were convicted of this offence, and sentenced to the Penitentiary, the first for a year, the three following for six months each, and the others for shorter periods of time.